IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 4516 of 2007(K)

E.P.210/2005 IN OS.180/2002 of PRL.M.C., KOCHI

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PETITIONER:

MR.K.T.MATHEW, S/O.THOMAS,
AGED 61 YEARRS, KATTIPARAMBIL HOUSE,
MUNTAMVELY BEHIND SANTHOM CHURCH,
RAMESWARAM VILLAGE, KOCHI TALUK.

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENTS:

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1. A.E.FRANCIS, AGED 39 YEARS,
S/O.A.P.ENASSY, RESIDING AT JANCY VILLA,
RAMESWARAM VILLAGE, KOCHI.

2. PRINCE, AGED 47 YEARS,
S/O.FRANCIS, RESIDING AT PUTHENPARAMBIL,
RAMESWARAM VILLAGE, KOCHI.

3. TENISON, AGED 46 YEARS,
S/O.FRANCIS, RESIDING AT PUTHENPARAMBIL,
RAMESWARAM VILLAGE, KOCHI.

4. MARTIN, AGED 41 YEARS, S/O.FRANCIS,
PUTHENPARAMBIL, RAMESWARAM VILLAGE,
KOCHI.

R1 BY ADV. SRI.A.P.SUBHASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE EXECUTION PETITION IN E.P.NO: 210/2005 IN O.S.180/2002

EXT.P2: -DO- OF THE DECREE DT.16.8.2004 IN O.S.180/2002

EXT.P3: -DO- OF THE COMPROMISE PETITION DT.13.8.2004

EXT.P4: -DO- OF THE COMMISSION REPORT DT.4.3.2004 IN O.S.180/2002

EXT.P5: -DO- OF THE STATEMENT OF OBJECTION DT.15.9.2006

EXT.P6: -DO- OF THE COMMISSION PETITION EE.A.NO:337/2006

EXT.P7: -DO- OF PETITION MANDATORY INJUNCTION E.A. 364/06

EXT.P8: -DO- OF THE IMPLEADING PETITION E.A.365/2006

EXT.P9: -DO- OF ORDER DT.10.1.2007 IN E.A.337/2006

EXT.P10: -DO- OF ORDER DT.10.1.2007 IN E.A.365/06

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 4516 OF 2007 K

Dated this the 27th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order Ext.P10. The second defendant is the petitioner and he has filed an application to implead other parties to the compromise for the purpose of disposing the execution petition filed by the third defendant in this case. The order passed as Ext.P9 is also under challenge. In the suit a compromise was filed between the plaintiffs and defendants 2 and 3. As per Clause 3 of the compromise petition it is decided that the property assigned by the second defendant in favour of the third defendant by virtue of document No: 5310/00 is to be measured by a taluk surveyor by both the parties incurring expenses equally and that has to be segregated from the puramboke and if it is found that the said extent is less than 10 cents then to fix the value and it is to be done within a period of one month. So, it is this part of the decree that is sought to be executed by the third defendant. Rather the crux of para 3 of the compromise petition is to find out the 10 cents of property assigned by the second defendant in favour of the third defendant excluding the puramboke and in case it is less than 10 cents then the value has to be fixed. So, in order to implement clause 3 of the decree

the court has necessarily to find out what is the extent assigned and it has also to fix the puramboke because if the 10 cents assigned takes in puramboke it has necessarily to be excluded from the assignment deed. For this purpose I do not feel that junction of the other members are necessary. If the other parts of the decree is to be implemented the persons concerned with the same may file appropriate execution applications and get it implemented. By allowing impleadment of other parties in this E.P what will result is simply protraction of the proceedings and it is not at all necessary to have the other parties on party array for deciding the issue and the measurement of item 4 is also not necessary and therefore the court below has properly considered the matter and disposed of in accordance with law by rejecting the prayer for impleadment as well as the other prayer under Ext.P9. Therefore the writ petition lacks merit and it is dismissed. Needless to say that if the writ petitioner wants to get implementation of part of the decree which confers on him the benefits, he is free to do so but not at the cost of the third defendant.

M.N.KRISHNAN
Judge

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